WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EDDY PUTMAN, *Applicant*

vs.

BALTIMORE ORIOLES;
USF&G, administered by
TRAVELERS INDEMNITY COMPANY,
Defendants

Adjudication Number: ADJ13157138
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact, Award, and Order (F,A,&O) issued by the workers compensation administrative law judge (WCJ) on June 12, 2025, wherein the WCJ found, in relevant part, that applicant is owed temporary total disability for the period of March 1, 1981 to June 1, 1981 and is entitled to a permanent disability award of 84% based on the medical reporting of panel qualified medical evaluator (PQME) Dr. Michael Einbund, MD. The WCJ also found that applicant's date of injury pursuant to Labor Code[1] section 5412 is February 2022.

Defendant alleges that the WCJ erred in awarding permanent disability retroactively to June 1, 1981, and temporary disability for the period of March 1, 1981 to June 1, 1981, when the date of injury per section 5412 was February 2022. Defendant also alleges that applicant's earnings records do not support the finding of an average weekly wage of $1,400.00. Defendant further alleges that because the finding of a section 5412 date of injury is after January 1, 2005, Dr. Einbund's reports are inadmissible for failure to follow the procedure set forth in section 4062.2.

Applicant filed an Answer.

The WCJ issued a Report and Recommendation recommending denial of the petition.

[1] All further references are to the Labor Code, unless otherwise stated.

We have considered the allegations of the Petition for Reconsideration (Petition), the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
> (b)
>
> > (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
> >
> > (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on July 15, 2025 and 60 days from the date of transmission is Saturday, September 13, 2025. The next business day that is 60 days from the date of transmission is Monday, September 15, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, September 15, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 15, 2025, and the case was transmitted to the Appeals Board on July 15, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 15, 2025.

II.

Based on our review of the record, we agree with the WCJ's determination that applicant is entitled to a retroactive award of permanent disability beginning June 1, 1981, and total temporary total disability from March 1, 1981 to June 1, 1981. Defendant fails to cite to any authority to support their contention that the section 5412 finding bars a retroactive award. Moreover, we find defendants position contrary to well-established, longstanding precedent regarding the impact of a finding of date of injury pursuant to section 5412.

In *J. T. Thorp v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327 [49 Cal.Comp.Cases 224], the court states:

> The "date of injury" is a statutory construct which has no bearing on the fundamental issue of whether a worker has, in fact, suffered an industrial injury … [T]he "date of injury" in latent disease cases "must refer to a period of time rather than to a point in time." [Citation.] The employee is, in fact, being injured prior to the manifestation of disability … [T]he purpose of section 5412 was to prevent a premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury." (153 Cal.App.3d at p. 341.)

The date of injury for a cumulative trauma that results in permanent injury occurs not at the time of exposure, but at the time the cumulative effect of the injury resulting from the exposure has ripened into disability. (See *Federal Insurance Co. v. Workers' Comp. Appeals Bd*. (*Johnson*) 221 Cal.App.4th 1116 [78 Cal.Comp.Cases 1257]; Lab. Code § 5412.)

More specifically, the date of injury under Labor Code section 5412 is separate and distinct from the period of injurious exposure to cumulative injury under Labor Code section 5500.5, as well as the date of commencement of payments for permanent injury.

Section 4650 directs the timing of payments of both temporary and permanent disability. (See, Cal. Lab. Code § 4650.) Further, subsection (b)(1) states, in pertinent part: If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity, except as provided in paragraph (2)[3].

Further, we have previously addressed the relationship between the end of temporary disability payments and the commencement date of permanent disability indemnity in *Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550 [2014 Cal. Wrk. Comp. LEXIS 69] (Appeals Bd. en banc). Therein, we noted that permanent disability and temporary disability are separate and distinct benefits, designed to compensate for different losses. (See Lab. Code, § 4661; *Sea-Land Service, Inc. v. Workers' Comp. Appeals Bd. (Lopez)* (1996) 14 Cal.4th 76, 88 [61 Cal.Comp.Cases 1360]; *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 405 [33 Cal.Comp.Cases 647].)[2] We observed that pursuant to section 4650(b), "the Legislature has capped an applicant's entitlement to temporary disability indemnity benefits at 104 weeks, but preserved the transition from one species of benefit to another, thereby providing "an uninterrupted flow of timed benefits during the transition from temporary disability indemnity to permanent disability indemnity." (*Brower, supra,* at 561.) Accordingly, we held that "when a defendant stops paying temporary disability indemnity pursuant to section 4656(c) before an injured worker is determined to be permanent and stationary, the defendant shall commence paying permanent disability indemnity based on a reasonable estimate of the injured worker's ultimate level of permanent disability." (*Id*. at 552.)

As discussed in the WCJ's report, substantial medical evidence supports the finding of the WCJ that applicant was temporary totally disabled from March 1, 1981 to June 1, 1981, and that applicant's condition became permanent and stationary on June 1, 1981. Additionally, the parties stipulated that June 1, 1981 was the date applicant reached permanent and stationary status.

Thus, we agree with the WCJ's findings as to the commencement date for permanent disability.

[3] Subsection (b)(2) relates to a situation where an employer offers the employee a position paying at least 85 percent of the wages at the time of injury, or if the employee is employed in a position that pays at least 100 percent of the wages and compensation at the time of injury.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 15, 2025

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

EDDY PUTMAN
GLENN STUCKEY
WALL MCCORMICK BAROLDI & DUGAN
BOBER PETERSON

LN/md

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
BP

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION:

Defendants have filed a timely, verified Petition for Reconsideration filed on July 2, 2025.

Petitioner seeks Reconsideration contending they are prejudiced by this Judge's decision of June 12, 2025. Applicant filed an Answer to Petition for Reconsideration on July 11, 2025.

II. STATEMENT OF FACTS:

Eddie Putman, while allegedly employed during the period of January 5, 1975 to October 1, 1981, as a professional baseball player, occupational group number 590, at various locations in California, claims to have sustained injury arising out of an in the course of employment to his head, neck, back, shoulders, elbows, wrists, hands, fingers, hips, knees, ankles, feet and toes. At the time of injury, the employer's workers compensation carrier was USF&G.

This matter proceeded to trial on July 11, 2023, October 23, 2023, April 23, 2024 and October 8, 2024. The parties stipulated at trial to the following:

1) At the time of injury, the employer's workers compensation carrier was USF&G.
2) No attorney fees have been paid and no attorney fee arrangements have been made.
3) The permanent stationary date pursuant to Dr. Michael Einbund is June 1, 1981. The issues for Trial are as follows:

1) Employment.
2) Injury arising out of and in the course of employment.
3) Earnings: Employee claiming $769 per week, based upon the applicant's testimony; Employer claiming $368 per week, based on the Social Security earnings.
4) Temporary Disability: Employee claiming the period of March 1, 1981 to June 1, 1981.
5) Permanent disability.
6) Need for further medical treatment.
7) Attorney fees.
8) Whether Defendant timely denied the claim.
9) Whether Applicant's claim is barred per the Statue of Limitations.
10) Whether Defendant is estopped from asserting the Statute of Limitations.
11) Date of injury pursuant to Labor Code Section 5412.
12) Whether Labor Code Section 5412 date of injury determines indemnity rates.
13) Whether the Labor Code Section 5412 date of injury determines date for rating purposes.

14) Whether Labor Code Section 3600.5 applies in this case.
15) The lien issues are deferred.

On the second day of trial, Applicant withdrew Exhibits 3 through 6. Parties were allowed time to submit Trial Briefs for the Court's consideration. This matter was submitted as of November 13, 2023. An Order Vacating Submission issued on January 10, 2024, because one of Defendants' exhibits (Exhibit A), was password protected, and the Court could not open the document. On December 7, 2023, a Substitution of Attorney was filed. Dimaculangan Associates Orange was substituted by Wall McCormick Santa Ana as attorneys for the Defendants.

At the April 23, 2024, Trial, Exhibit A, that was not password protected, was submitted into evidence. This matter stood submitted as of April 23, 2024.
On July 11, 2024, the submission of this case was vacated and referred to the Disability Evaluation Unit (DEU) for a formal permanent disability rating. A timely Petition to Strike Formal Rating and Objection to Formal Rating was filed by Defendants dated August 6, 2024. This matter was set for Trial for the cross-examination of the DEU Rater.

Ms. Cecilia Mejia, DEU Rater, was cross-examined by the Defendants on October 8, 2024. Ms. Mejia testified that she has been employed as a Disability Evaluator since February of 2006. She was asked by the undersigned to rate Dr. Michael Einbund's January 26, 2022 report. There was a correction made to the rating for the left ankle arthritis, 3 millimeter, which should be a 2% whole person impairment standard instead of a 3% whole personal impairment standard (MOH/SOE 10/8/2024, page 2, lines 11 – 16). The matter was referred to the DEU for a formal permanent disability rating.

No objection was made by any of the parties after service of the DEU rating. This matter was submitted as of October 21, 2024. A Findings, Award and Order along with the Opinion on decision issued on November 13, 2024.

Applicant's counsel filed correspondence with the Court seeking clarification of issues. Therefore, an Order Rescinding Finding and Award issued on December 4, 2024. At the trial that took place on March 19, 2025, issues were clarified.

Specifically, Applicant claimed earnings of $1,400 per week, based upon the Applicant's testimony. Employer/carrier claimed $368.31 per week, based on the Social Security earnings and estimated 172 days of work between April to September of 1981.

Permanent disability and Life Pension, if applicable, were placed in issue, as well as Attorney's fees of 18% on permanent disability, COLA, life pension rate, if applicable, and temporary disability.

A Findings and Award issue on June 12, 2025. Defendants filed a timely, verified Petition for Reconsideration and Amended Petition for Reconsideration

both on July 2, 2025. Applicant filed an Answer to the Petition for Reconsideration on July 11, 2025.

III. DISCUSSION

Petitioner cites the case of *Penrose v. Denver Gold*, North River Ins. Co. 2023 Cal.Wrk.Comp.P.D. LEXIS 256, as a legal basis to overturn the finding of permanent disability retroactive to June 1, 1981. As indicated in Respondent's Answer, the findings in the medical reporting and the doctor's testimony during cross examination, in the *Penrose* case, was found to be inherently speculative and therefore, not substantial medical evidence. Here, there was no basis to find Dr. Einbund's opinions to be speculative. Dr. Einbund's findings, as indicated in the undersigned's opinion and decision, were found to be substantial medical evidence. Dr. Einbund stated on page 18 (Exhibit 1), of his report, in pertinent part as follows:

> "He has denied sustaining any other injuries subsequent to his retirement from professional baseball and there is no indication that any of his other post baseball activities have contributed significantly to any of his current findings."

Based on the examination of the Applicant and Dr. Einbund's medical expertise, he found the Applicant to be temporary totally disabled from March 1, 1981 to June 1, 1981, as claimed by the Applicant. Dr. Einbund opined that the Applicant's condition became permanent and stationary within approximately three months following his retirement from professional baseball (Exhibit 1, page 12). Given that Dr. Einbund's medical reporting was found to be substantial medical evidence, there is no basis for overturning this WCJ's findings.

Additionally, it is noted that the parties in fact stipulated that the Applicant reached permanent and stationary status as of June 1, 1981 (MOH/SOE July 11, 2023, page 2, lines 12 – 13).

With regard to the Applicant's earnings, Petitioner references the Social Security earnings and provides a calculation based on "estimates" of days. Also, Petitioner provides two different potential calculations, an average weekly wage of $368.31 or $414.56. In the Minutes of Hearing/Summary of Evidence dated March 19, 2025, page 2, lines 5-6, employer/carrier claimed $368.31 per week. It is inaccurate that the Social Security earnings were disregarded but rather the calculations were unclear and remain so.

This WCJ found the Applicant to be credible and his testimony to be unrebutted. Applicant testified that he received a signing bonus in the amount of $50,000 (MOH/SOE 10/23/2023, page 4, lines 24- 25). The Applicant testified that the signing bonus, in addition to a salary, plus taking into account the hotels, airfares and bus fares totaled $1,400 per week. Based on the Applicant's credible testimony it is found that the Applicant's weekly salary was $1,400. There is no basis to overturn this finding on speculative calculation estimates.

Petitioner asserts that Dr. Einbund's reports are inadmissible because there has been a finding of a date of injury of February 2022 based on Labor Code § 5412, for purposes of addressing the Statute of Limitations issue. As stated in this WCJ's Opinion on Decision, Labor Code Section 4060 provides that if a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2. This section was effective April 19, 2004, and applies to all claims filed subsequent to that date.

Labor Code Section 4062.2 provides whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section. It has been determined that a void in the law was created when sections 4061 and 4062 were amended under Sen. Bill 899 to apply to the medical evaluation and reporting procedure of section 4062.2. This void occurred because the medical evaluation and reporting procedure in section 4060, section 4061, or 4062 are limited to represented cases for dates of injury occurring on or after January 1, 2005.

In addressing this void, the Appellate Court has found that the Legislature intended former sections 4060 et seq. to remain operative for represented cases with a date of injury before January 1, 2005. For injuries ***claimed to have occurred*** prior to January 1, 2005, section 4062, as it existed before its amendment by SB 899, continues to provide the procedure by which medical-legal reports are to be obtained *(Nunez v. Workers' Comp. Appeals Bd., 136 Cal. App. 4th 584)* [emphasis added].

Moreover, the en banc decision of the Appeals Board in *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217, [2005 Cal. Wrk. Comp. LEXIS 3] (*Simi*), which is both instructive and mandatory authority herein, and which the court in *Nunez* and *Cortez* specifically approved. (*Nunez, supra*, at p. 593.) In *Simi*, the parties stipulated that Applicant sustained a cumulative injury ending September 5, 2002. (*Id.* at p. 218.) The Court held that because the legislature did not provide a medical-legal procedure for cases occurring prior to the effective date of SB899, "section 4062, as it existed before its amendment by SB 899, continues to provide the procedure by which AME and QME medical-legal reports are obtained in cases involving represented employees." (*Id.* at p. 221.) Applying these principles in *Tanksley v. City of Santa Ana* (January 25, 2010, ADJ2005173) [2010 Cal. Wrk. Comp. P.D. LEXIS 74.], a case involving a claimed cumulative injury from December 2003 to December 2004, the Court held:

> *...[T]he question of the process that applies to applicant's claim does not first require a finding of the date of injury.* Instead, for injuries that are claimed to have occurred prior to January 1, 2005, as alleged in this case,

> section 4062 as it existed before its amendment by SB 899 continues to provide the procedure by which medical-legal reports are to be obtained. (*Nunez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 584 [38 Cal. Rptr. 3d 914, 71 Cal.Comp.Cases 161] (*Nunez*); *Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596 [38 Cal. Rptr. 3d 922, 71 Cal.Comp.Cases 155]; *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217 (Appeals Board en banc); c.f. *Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 (significant panel decision), 71 Cal.Comp.Cases 1900 (writ den.).) (*Id.* at pp. 9-10.)

The decision in *Tanksley* emphasized that the parties to a claim of injury occurring prior to January 1, 2005, should not be required to obtain a judicial determination as to the date of injury pursuant to section 5412 in order to determine the appropriate procedure by which to obtain medical-legal reporting. (*Ibid*.) Such a holding would be inconsistent with the California Constitutional mandate that the workers' compensation law "shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., Article XIV, § 4.)

In this case, given that the injuries claimed to have occurred prior to January 1, 2005, specifically, during the period of January 5, 1975 to October 1, 1981, Dr. Einbund's reports are admissible.

RECOMMENDATION

For the reasons stated above it is respectfully recommended that the Petition for Reconsideration be
DENIED.

Date: July 15, 2025

Laura Mendivel
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE